IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1877 OF 2003
IN
B.C.C.C. CHARITY APPLN. NO.8 OF 2000
WITH
FIRST APPEAL NO.1908 OF 2003
IN
B.C.C.C. CHARITY APPLN. NO.9 OF 2000
WITH
FIRST APPEAL NO.1935 OF 2003
IN
B.C.C.C. CHARITY APPLN. NO.10 OF 2000

Mr. Ranshi L. Shah ...Appellant
Vs.
Premji Devji Shah & Ors. ...Respondents

Mr. Soli Kapoor with Mr. Bipin Joshi Advocates for Appellant
Mr. S.G. Aney, Sr. Counsel with Mr. H.V. Gala, Mr. Firdosh Pooniwala and Mr. Z.A. Jariwala i/b. M/s. Thakore Jasiwala and Associates for Respondents 1 to 4

CORAM: SMT.ROSHAN DALVI,J.
DATED: 28TH JUNE, 2007

JUDGMENT.

1. Only the interpretation of the declaration of Trust dated 4th August, 1982 is the subject matter of this Appeal as was of the proceedings before the learned Judge whose Judgment

dated 10/11 th July, 2003 is challenged. Both the Advocates agree that the Appeal be disposed of at the admission stage itself.

2. There are three distinct aspects which call for interpretation.

(1) Whether the appointment of Trustee is required to be done by all the surviving and continuing Trustees acting together.

(2) Whether the notice of the meeting to be held for appointment of Trustees is mandatorily required to be of 4 clear days.

3. **Appointment of Trustees** :

Clauses 19, 21 and 23 of the Trust Deed –

Under clause 19 at any meeting of the Trustee the votes of persons present and entitled to vote or votes of a majority of those present and voting would be empowered to decide any question or matter proposed at such meeting.

4. Under Clause 21 if the Trustees are reduced to less than 5 in number, the surviving or continuing trustees are enjoined to summon a meeting of the Trustees and such

meeting is entitled to appoint as many persons required to be appointed as Trustees.

5. Under Clause 23 the Quorum for a meeting is three Trustees present and all decisions of the Trustees present, if not unanimous are required to be taken by a majority.

6. It is argued on behalf of the Appellants that surviving and continuing Trustees who are empowered to appoint other Trustees would mean all the surviving and continuing trustees acting together for such appointment. This is based upon the contention that upon appointment of a Trustee the entire Trust and its property get vested in him. For such vesting the act of all the Trustees unanimously is required. Hence, it is argued that even if one Trustee is absent in a meeting for appointment of new Trustees, the business for such appointment cannot be transacted at such meeting. If he perversely or continuously remains absent, the remedy lies in an appointment to be made by the Court. It is argued on behalf of the Appellants relying upon the decision of in the acts of Mohammed Jaffer Haji Vs. Mohammed Jamohammed 1943 BLR 340, in which the continuing Trustees are held to be all the continuing Trustees for the purpose of appointment of Trustees. In that case it was held that only some of the Trustees could not appoint a new

trustee at the meeting at which one or more of their members were absent. That Judgment was in an Originating Summons. The Court was, therefore, called upon to interpret the terms and clauses of the Trust Deed which governed that Trust. In that Trust provision was made for the continuing Trustees to appoint new Trustees. Notice of the meeting for appointment of the Trustees was given. One of the Trustees remained absent. There was nothing to show that the Trustee consented or agreed to the appointment. It was held that the power to appoint new Trustees was vested in all the Trustees and consequently a majority of Trustees, even if they alone were present at the meeting, could not appoint another Trustee. In that case the Trustees were not entitled to act by majority under the Trust Deed. It was held that the Trustees must exercise their powers jointly, or with sanction and approval of their co-trustees. The power to appoint was held exercisable by all of them acting together. This decision was based upon the interpretation of the scheme of the Trust in that case. Reliance was placed in that Judgment upon an earlier judgment in the case of Ishwardas Vanilal Vs. Mancharam S. Khandwalla in which the contention that if a Trustee remained absent despite notice of the meeting given to him, the appointment by the Trustees present who constituted the majority was negatived holding that all the Trustees must join in the execution of

the Trust and the appointment of a new Trustee cannot be valid and proper unless all the Trustees joined in such appointment.

7. That was the case in which the clause relating to the appointment of new Trustees was to be interpreted. The clause relating to the holding of the meetings and considering the votes of the Trust present at such meeting was neither cited nor read. In this case the aforesaid three clauses shall have to be read together.

8. There is specifically no distinction made in the matter of appointment of new Trustees and in other matters that can be transacted at the meeting of the Trustees. Consequently under clause 19 which applied to “any Meeting”, the majority of the votes of the Trustees present and voting are to be regarded for any question or matter, including the question of appointment of new Trustees. This Trust is to that extent different from the Trust Deed which came up for interpretation in the Originating Summons in the case of Mohammed Jaffar supra.

9. It is, therefore, clear that the meeting of the Trustees is to be called. At that meeting a majority of the Trustees present and voting would determine the question of appointment of

new Trustees.

10. Further under Clause 12 the Trustees were enjoined to summon a meeting. At the meeting so summoned they are enjoined to appoint such number of Trustees as are required to be appointed. The term “such meeting” is “a Meeting so summoned by the Trustees”. It would be a meeting in which, like in any other meeting, the majority of those present would determine the question of appointment of new Trustees.

11. Further clause 23, which relates to the Quorum at the meeting, shows that all the decisions of the Trustees may be by a majority. This includes the decision relating to the appointment of new Trustees, as there is no departure by a separate provision for the decision relating to appointment of new trustees only.

12. The learned Judge in the impugned Judgment has considered the provisions with regard to the appointment of Trustees.

13. **The Notice of Meeting** :

Under Clause 17 of the Trust Deed, for a meeting of the Trustees, a notice in writing is required to be sent and served

upon the Trustees 4 clear days in advance. The notice in this case has been sent 3 clear days in advance instead. It has to be seen whether such a notice which is a shorter notice than which is required would invalidate all the transactions at such meeting. For that purpose and intent of the specific clause in the Trust Deed is required to be understood. 4 clear days notice is required to enable the Trustees to attend the meeting. It is also required to be given to enable them to give themselves a thought about the matters to be transacted at such meetings so that they may decide in advance how they would vote at the meeting. The purpose of such a clause is not to frustrate proceedings transacted at the meeting for a technical infirmity. It would, therefore, have to be seen whether because of short notice any Trustee could attend the meeting or was made unable to transact the business thereto and to vote as per his decision. In this case the Trustees who challenged the notice as having been given less than 4 clear days in advance challenged the appointment which was of a specific duration. That challenge was negatived on merits. The Appellant is an outsider. He has suffered no prejudice for having received the notice short by a single day. He is not a Trustee and is not effected by the actual appointment of another Trustee. For want of any such prejudice specifically on account of notice shorter by a day, the resolution passed

and the business transacted at the meeting of the Trustees cannot be challenged. Such a pedantic, narrow interpretation would be hyper-technical and go against the interest of the Trust. In the instant case, therefore, notice of 3 clear days shows substantial compliance with the provisions of Clause 17 of the Trust Deed.

14. **Term of Appointment** :-

1. The Appellant contends that the term of appointment of new Trustees is necessarily for life as there is no specific provision in the Trust Deed specifying any shorter period. The Appellant relies upon Clause 21 r.w. Clause 19 of the Trust Deed. Under Clause 21 the appointment of the Trustees is contemplated without specifying the term of such appointment. Under Clause 19 the ceasation of the term of Trustees is mentioned. Under that Clause a Trustees would cease to be a Trustee upon ceasing to follow Swetambaram Jain Religion, bearing incapable or unfit to act as Trustee, refusing to act as such becoming insolvent, making a composition with Creditors, residing abroad for 1 year etc would cease to be Trustees. It is contended on behalf of the Appellant that nothing that is provided in Clause 19 to put to an end the tenure of a Trustee once he is appointed. Consequently in the absence of any such contingency he continues as Trustee.

15. It is contended on behalf of the Respondents that in the past Trustees have been appointed for a period of 6 years. They have thereafter ceased to hold the Office of Trustee. There were other Trustees who where appointed for life. They continued as such. The present Trustees were specifically proposed to be appointed for a period of 6 years. They have accepted such an appointment. After such a contractual transaction, they cannot resile therefrom to continue as Trustees in perpetuity.

16. It is seen that Appellant Trustees in the Trust Deed are not specifically granted a tenure for life. The Trust Deed makes a provision only for cessation of the Office of Trustees when a Trustee becomes unfit to continue as such. That provision therefore, alone cannot determine when Trustees, otherwise fit, would complete their tennure. That would be determined by the specific agreement between the parties. That agreement would be contained in a proposal for such office which is accepted by the relevant party. The tenure would be in terms of the proposal made. Once accepted, it will be a binding contract. This would be so, since there is nothing to the contrary in the Trust Deed. In this case the Appellant agreed to a term of 6 years and is accordingly bound by it. The Argument to the contrary that his tenure

would come to an end only on the contingencies specified in Clause 19 is misconceived. The end of tenure of Trustees is quite different from the cession of a Trustee upon a specified unfitness.

17. It is seen that the learned Judge has correctly interpreted the Deed of Trust. There is no reason to make a departure therefrom in Appeal. The Appeals are accordingly dismissed.

(SMT. ROSHAN DALVI, J.)